SUPREME COURT, U. S.

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No. 1225

In the Supreme Court of the United States

SALT LAKE CITY FIRE FIGHTERS LOCAL 1645, AFL-CIO, FEDERATED FIRE FIGHTERS OF THE STATE OF UTAH, SALT LAKE CITY POLICE UNION LOCAL 470, AFL-CIO, SALT LAKE CITY POLICE MUTUAL AID ASSOCIATION, SALT LAKE CITY EMPLOYEES, LOCAL 1004, AFL-CIO, for and on behalf of their members, and JIM FISHER and DAVE BRADFORD for themselves and for and on behalf of all other persons similarly situated,

Petitioners,

vs.

SALT LAKE CITY, a municipal corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF UTAH

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SALT LAKE CITY FIRE FIGHTERS LOCAL 1645, AFL-CIO, FEDERATED FIRE FIGHTERS OF THE STATE OF UTAH, SALT LAKE CITY POLICE UNION LOCAL 470, AFL-CIO, SALT LAKE CITY POLICE MUTUAL AID ASSOCIATION, SALT LAKE CITY EMPLOYEES, LOCAL 1004, AFL-CIO, for and on behalf of their members, and JIM FISHER and DAVE BRADFORD for themselves and for and on behalf of all other persons similarly situated,

Petitioners,

vs.

SALT LAKE CITY, a municipal corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Utah entered in the above-entitled case on January 3, 1969.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of the State of Utah is reported at 449 P. 2d 239. A copy of the opinion of the Utah Supreme Court of Jan. 3, 1969 in the above entitled case is included herein as Appendix A. No opinion was published

by the State District Court. The Order of the District Court, Third Judicial District, Salt Lake County, dated July 10, 1968, dismissing Petitioners' complaint for declaratory judgment as failing "to state a cause of action" is included in Appendix B herein.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Title 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Do the First, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States provide any limitations on a municipal government in its imposition of restrictions upon its employees as a condition of employment and if so, what limitations?

CONSTITUTIONAL PROVISIONS AND MUNICIPAL ORDINANCES INVOLVED

CONSTITUTIONAL PROVISIONS INVOLVED:

"Congress shall make no law abridging the freedom of speech, . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." First Amendment, U. S. Constitution.

"No person shall be . . . deprived of life, liberty or property without due process of law . . . :" Fifth Amendment, U. S. Constitution.

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Ninth Amendment, U. S. Constitution.

". . . No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . ." Fourteenth Amendment, U. S. Constitution.

ORDINANCES OF SALT LAKE CITY, UTAH CHALLENGED:

"No person of the classified civil service of the fire department shall use his official position as authority to influence or coerce the political action of any person, nor be a member or delegate or alternate to any political convention, or serve as a member of any committee of any political party, or take any active part in the management of any political campaign, nor solicit, collect or receive any assessment, subscription, contribution or dues intended or used for any political purpose whatsoever, nor shall he be obliged to contribute to any political fund or render any political service whatsoever." Section 14-1-5, *Revised Ordinances of Salt Lake City, Utah*, 1965, as amended.

"Political activities prohibited. No person of the classified civil service of the health department shall use his official position or authority to influence or coerce the political action of any person, nor be a member or delegate or alternate to any political convention, nor serve as a member of any committee of any political party or take any active part in the management of any political campaign, nor solicit, collect or receive any assessment, subscription, contribution, or dues intended or used for any political purpose whatsoever, nor shall he be obliged to contribute to any political fund or render any political service whatsoever." Section 17-3-5, *Revised Ordinances of Salt Lake City, Utah*, 1965, as amended

"Political activity. No person of the classified civil service of the police department shall use his official position or authority to influence or coerce the political action of any person, nor be a member or delegate or alternate to any political convention, nor serve as a member of any committee of any political party, or take any active part in the management of any political campaign, nor solicit, collect, or receive any assessment, subscription, contribution or dues intended or used for any political purpose whatsoever, nor shall he be obliged to contribute to any political fund or render any political service whatsoever." Section 30-1-10, *Revised Ordinances of Salt Lake City, Utah*, 1965, as amended.

"Residency within city required of all appointive officers and employees. (a) Except as hereinafter provided; every appointive officer and employee of Salt Lake City must be a resident at the time of his appointment and must continue a resident of the city while employed by the city.

"(b) Appointive officers and employees residing outside a fifteen mile radius from Washington Square at the effective date of this ordinance shall, within two years thereafter, establish residency within Salt Lake City.

"(c) All other appointive officers and employees residing outside the city limits at the effective date of this ordinance are hereby encouraged to establish residency within Salt Lake City when to do so would not entail substantial hardship. In no case shall an officer or employee residing outside the city limits be permitted to move from one residence to another outside the city limits.

"(d) The provisions of this section regarding residency may be suspended by the Board of City Commissioners in the following situation:

"(1) When the nature of the duties of an offi-

cer or employee requires residency outside the limits of Salt Lake City.

"(2) In case of public emergency or calamity or war.

"(3) In case of the employment of professionally trained experts employed upon a temporary basis.

"(e) Failure to comply with the residency requirements of this section shall constitute grounds for dismissal."

"SECTION 2. In the opinion of the Board of Commissioners of Salt Lake City it is necessary to the peace, health and safety of the inhabitants of Salt Lake City that this ordinance become effective immediately.

"SECTION 3. This ordinance shall take effect upon its first publication.

"Passed by the Board of Commissioners of Salt Lake City, Utah, this 4th day of January, 1968.

J. BRACKEN LEE,
Mayor"

Section 25-1-7, *Revised Ordinances of Salt Lake City, Utah*, 1965, as amended.

STATEMENT OF THE CASE

Petitioners are employees of Salt Lake City, Utah (Respondent), or associations representing the employees of Respondent. Petitioners commenced a declaratory judgment action in April, 1968, in the Third District Court of Utah challenging the constitutionality of certain ordinances of Respondent. (Amended Complaint, Appendix B.)

The first ordinance (actually three ordinances, identical except relating respectively to health, fire and police depart-

ment employees) prohibits all political activity by any civil service employee. The ordinance makes no distinction by function and governs alike all firemen, janitors, etc. Respondent did not contend, nor did it offer any evidence of any kind showing or even tending to show, that the ordinance was needed, promoted efficiency or was otherwise a justified exercise of governmental power. Indeed, Respondent offered no evidence at all, contending, rather, that the City could impose any restrictions on its employees which a private employer could impose. Beyond the sweeping prohibitions in the language of the ordinance itself, Respondent interprets and enforces the ordinance as *prohibiting any "action in a political sense"* including non-partisan elections (Appendix B).

The second ordinance challenged by Petitioners requires all City employees to remove their residences within a certain radius of City Hall — which included an area outside of the City limits — within a specified time or face discharge without hearing or appeal. Respondent admitted that "many employees of [Respondent] have been employed for numerous years and reside outside outside the boundaries [of Respondent]" (Appendix B). Here, too, the Respondent offered no evidence at all and contended merely that it was under no requirement to justify any ordinance respecting employees. No reason of any kind for the ordinances appears in the record.*

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*The Utah Supreme Court, while finding that "it is conceded that there will be cases of hardship for some in order to continue their employment with the City", a condition it found in passing to be "regrettable", gratuitously suggested possible bases (although wholly outside the record) for the ordinance. These appear to be that a city, "not unlike" a "private employer" "offers and gives the employee his job" and if an ordinance is "for the city's convenience and economical operation" or even if "conceivably to have those whom it helps clothe and feed participate in and

The District Court, without opinion, simply dismissed Petitioners' Amended Complaint as failing "to state a cause of action." Upon appeal, Petitioners challenged these ordinances of Respondent as being violative of and repugnant to the First, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States. On January 3, 1969, the Utah Supreme Court, affirmed.

This Petition asks *Certiorari* to review the opinion of the Supreme Court of the State of Utah.

REASONS FOR GRANTING THE WRIT

This Court should issue its Writ of Certiorari to the Utah Supreme Court because the Utah Court has decided a federal question of substance not heretofore determined by this Court and has decided that question in a way repugnant to the Constitution of the United States. The Utah Supreme Court has, in effect, held that a municipal government may, without violating any provision of the United States Constitution, impose any restrictions on its employees which a private em-

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*—Continued

contribute support and taxes for its benefit" it will not be subject to challenge on Constitutional grounds. (Appendix A.) Any consideration of the equally apparent fact that the City needs its employees and the employees contribute to the well-being of the City and that governmental employment is not always a matter of benevolent paternalism, is wholly ignored by the Utah Court.

In point of actual fact, Petitioners' evidence showed that the 15-mile radius was wholly arbitrary, and included large areas outside the City limits and thus could not be justified (the Utah Supreme Court found that this was a "conceivabl[e]" possibility) as a tax revenue measure. The evidence further showed that by reason of the freeway system and the residences of the employees affected that the ordinance was unrelated to efficiency or economy; many employees living near freeways outside the radius could reach their place of employment within the City in less time than those who resided within the specified radius.

ployer might impose. This erroneous interpretation of the Constitution of the United States by the Utah Supreme Court has special and important significance because a substantial and ever-growing number of the national labor force is now employed by various levels of government. The Utah Court erroneously read *United Public Workers of America (CIO), et al.* v. *Mitchell, et al.*, 56 F. Supp. 621 (D. C., 1944), *reviewed at* 320 U. .S 75 (1946) as supporting its decision. The Constitutional principles enunciated in the *Mitchell* decision, because they are susceptible to the tortured and freedom-constricting interpretation accorded by the Utah Supreme Court, should be reconsidered by this Court. The magnitude and importance of the question presented in this Petition was well stated by the California Supreme Court in *Bagley* v. *Washington Township Hosp. Dist.*, 55 Cal. Rptr. 401, 421 P. 2d 409, 417 (1966):

> "In summary we note that the expansion of government enterprise with its ever-increasing number of employees marks this area of the law a crucial one. As the number of persons employed by government and governmentally-assisted institutions continues to grow the necessity of preserving for them the maximum practicable right to participate in the political life of the republic grows with it. Restrictions on public employees which, in some or all of their applications, advance no compelling public interest commensurate with the waiver of constitutional rights which they require imperil the continued operation of our institutions of representative government."

The political activities ordinance of Salt Lake City is sweeping in its prohibitions and its applicaton. An employee subject to the ordinance may not participate *in any way* in political activities, and is even barred from any involvement

in political conventions — an important, even critical, aspect of citizen participation in government. The imprimatur of the Utah Supreme Court has now been affixed to such restrictive ordinances and other cities and governmental units are likely, in reliance on that opinion, to adopt similarly sweeping and overbroad ordinances *vis-a-vis* their employees.

Employees are, by this ordinance, strictly muzzled in bringing to bear upon pressing and troublesome problems of government, in the political arena, the benefit of their experience and the wisdom gained through their years of professional and semi-professional employment. Clearly, the affected employees are thereby deprived of their most basic, fundamental rights. Equal clear, however, is the fact that such ordinances, if permitted to stand, preclude the maximum input of informed views of a large number of our citizens thereby undermining the entire foundation of representative government.

ARGUMENT

POINT I.

THIS COURT SHOULD REVIEW AND RECONSIDER THE CONSTITUTIONAL PRINCIPLES ENUNCIATED IN *MITCHELL* v. *UNITED PUBLIC WORKERS*, 320 U. S. 75 (1946).

The Utah Supreme Court cites one case only (*viz.*, the decision of the District Court for the District of Columbia in *United Public Workers of America (CIO), et al.* v. *Mitchell, et al.*, 56 F. Supp. 621 (1944) (Note 7, Utah Supreme Court decision Appendix A) in support of its decision upholding the constitutionality of Respondent's ordinances. The Utah Su-

preme Court did not even acknowledge this Court's decision in the same case, 320 U. S. 75 (1946).

The Utah Supreme Court, in its patently superficial reading of *Mitchell*, seemed to find support for its holding that the courts should not intercede in cases involving imposition of conditions by a municipality upon its employees where the municipality found reason to impose conditions.

If this, today, is the thrust and purport of *Mitchell* — and the Utah Supreme Court apparently so read it — then, we respectfully submit, it is bad law and should be reviewed by this Court. The Utah Court read *Mitchell* (or at least the District Court's decision in *Mitchell*) as giving *carte blanche* approval to governmental restriction of the Constitutional rights of employees as a condition of employment. The Utah Court does not articulate clearly — or, indeed, at all — its rationale in upholding the challenged ordinances, but it does suggest that a city is in a position no different from "any employer" in imposing restrictions upon its employees. The Utah Court does not state or even suggest, except in one cryptic sentence* what limitations the U. S. Constitution imposes

*"As to the urgence that government cannot prevent its employees from engaging in political activities, we agree, unless legislation prohibits it in certain areas which, in the nature of things, requires [sic] that such activity shall not inure to the detriment of government functioning or well-being". 449 P.2d 240.

If — and Respondents confess they cannot grasp precisely what, if anything, the Utah Supreme Court meant by that language — the Court is suggesting some limitation on the City's powers, the opinion fails to specify or even hint at any criteria or standard for ascertainment of the legitimate exercise of those powers. Inasmuch as the Respondent offered no evidence or even argument that the challenged ordinance had any relationship to "governmental functioning", the Utah Supreme Court in affirming, certainly freed the City of any need to show the legitimacy of the exercise of its powers.

on this plenary and potentially despotic power of a city or, indeed, whether any limitations on that power exist at all. The Utah Supreme Court did not even discuss possible — and as is apparent in these ordinances, clear — overbreadth.

The ghost of Justice Holmes' celebrated dictum ("The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman * * * the servant cannot complain, as he takes the employment on the terms which are offered to him") thus remains dangerously palpable. The dissenting opinions in *Mitchell* (320 U. S. 75, 105 *et seq.*) foresaw and forewarned of the unfortunate consequences likely to follow from the majority opinion in that case.

If this Court grants the writ as prayed, Petitioners would urge this Court to consider the reasoning of the dissenting opinions in *United Public Workers of America (CIO), et al.* v. *Mitchell, et al.*, 320 U. S. 75, 105 *et seq.* (1946) and *Adler* v. *Board of Education*, 342 U. .S 485, 508 *et seq.* (1952) and the analyses advanced by a number of recent writers including Chafee, *Thirty-five Years With Freedom of Speech*, 1 KAN. L. REV. 1 (1952); Leahy, *The Public Employee and the First Amendment — Must He Sacrifice His Civil Rights to Be a Civil Servant?* IV CALIF. WEST. L. REV. 1 (Spring, 1968); *The First Amendment and Public Employees: Time Marches On*, 57 GEORGETOWN LAW JOURNAL 134, (October. 1968). See also, *U. S.* v. *Robel*, 389 U. S. 258 (1967), *Keyishian* v. *Bd. of Regents of the University of N. Y.*, 385 U. .S 589 (1967), *McLaughlin* v. *Tilendis*, 398 F. 2d 287 (7th Cir., 1968), *Bagley* v. *Washington Hospital District, supra, De Stefano* v. *Wilson*, 233 A. 2d 682 (N. J. 1967), *Landes* v.

Town of North Hempstead, 36 U. .S Law Week 2312 (N. Y. Ct. of App. 1967).

POINT II.

SALT LAKE CITY'S ORDINANCE PROHIBITING POLITICAL ACTIVITIES OF EMPLOYEES IS A SERIOUS ENCROACHMENT UPON BASIC CONSTITUTIONAL RIGHTS TO FREE SPEECH AND ASSOCIATION AND THE UTAH COURT ERRED IN CONTENDING THAT THIS COURT'S DECISION IN *MITCHELL v. UNITED PUBLIC WORKERS*, 320 U. S. 75 (1946) HELD SUCH ORDINANCES CONSTITUTIONAL.

The Utah Court, in brushing aside — almost contemptuously — Petitioners' arguments that the Salt Lake City ordinance prohibiting political activties was repugnant to the U. S. Constitution, held that the ordinance was "not unlike the federal Hatch Act" and inasmuch as the Hatch Act had been held constitutional (citing the District Court decision, 56 F. Supp. 621) declined any further consideration of Petitioners' claims.

In truth, the challenged ordinance, by its express prohibitions and in the fashion in which it is admittedly being enforced by Respondent, goes far beyond the federal Hatch Act. Furthermore, the federal act under review in *Mitchell* (set out at 320 U. S. 78) differed in very important respects from Respondent's political activities ordinance:

Hatch Act (*in* 1946)	*Salt Lake City Ordinance*
"It shall be unlawful—to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof." (Prohibition limited to elections.)	"No person of the classified civil service . . . shall use his official position or authority to influence . . . the political action of any person . . ." (Prohibition extends to any, and undefined, "political action".)
No comparable prohibition in the Hatch Act at 1946.	". . . nor be a member or delegate or alternate to any political convention . . ."
No comparable provison in the Hatch Act at 1946.	". . . nor serve as a member of any committee of any political party . . ."
"All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates . . ."	No comparable exemption or protection in the Ordinance. On this issue, the Ordinance and the Hatch Act (at 1946) appear in direct opposition, particularly as the City interprets and enforces the Ordinance as precluding "any activity in a political sense" (App. B).

CONCLUSION

No area of the law deserves or, indeed, cries out for, more immediate consideration than that presented by this Petition, viz., the protection of rights of government employees. For good or ill, more and more of our national labor force are being employed by government or government-assisted programs and government appears increasingly disposed to restrict the Constitutional rights of its employees as a condition of employment. Whatever may be said for the validity, some decades ago, of the often-advanced proposition that any employee who is unwilling to accept the terms of employment offered by a governmental employee may simply go elsewhere for employment, this proposition has no validity at all today when many of the government employee class have trained and specialized in services which may only be sold to government. E.g., police, health inspectors, firemen, teachers, etc. See *Keyishian* v. *Bd. of Regents, supra.*

Petitioners respectfully submit that the question presented herein is of great contemporary significance to a large, and increasing, number of citizens and deserves the consideration of this Court.

Respectfully submitted,

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Attorney for Petitioners

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF UTAH

Salt Lake City Fire Fighters Local 1645, etc., *Plaintiffs and Appellants,* v. Salt Lake City, a municipal corporation, *Defendant and Respondent.*	No. 11351 FILED January 3, 1969 L. M. Cummings, Clerk

HENRIOD, Justice:

Appeal from a dismissal of a declaratory judgment action. Affirmed. No costs awarded.

Plaintiffs, appointed officers and employees, urge that certain city ordinances having to do with 1) their residence within the city and 2) prohibiting certain political activities while working for the City, are (a) not within the City's express or implied powers[1] and (b) are offensive to their constitutional rights.[2]

As to (a) above, plaintiffs indulge an ipse dixit by saying that the City "evidently claims to derive statutory power to adopt the residence ordinance from Sec. 10-6-6." There is

[1]Title 10-6-6, Utah Code Annotated 1953: "Eligibility of officers. — All elective officers of cities and of towns shall be chosen by the qualified voters of their respective municipalities. No persons shall be eligible to any elective office who is not a qualified elector of the city or town, nor shall any person be eligible to any office who is a defaulter to the corporation. *The governing body of a municipality may prescribe by ordinance that any or all appointive officers be qualified electors of the municipality.*" (Emphasis added.)

[2]Art. I, Secs. 1, 7, 18, 22 and 24, Utah Constitution.

nothing in the City's brief that makes any such contention and 10-6-6 is not even cited therein. The City *does* suggest that with respect to residency requirements, the matter is not unlike that of a private employer. The City suggests that such power is fairly implied in the broad powers granted to cities, with which we are constrained to agree; and it refers to Title 10-6-15, U.C.A. 1953, where the Commission "may make other rules and regulations as may be necessary or proper for the efficient and economical conduct of the city." We think Stevenson v. Salt Lake City,[3] having to do with gambling devices, is not apropos here, except that it confirms the concept of fairly implied powers, — which we think is the case here.

It is to be noted that the subject ordinance[4] deals principally with (a) prospective employment, and (b) a two-year granddaddy or phase-out provision requiring those employees residing outside a 15-mile radius of the City hall to become residents *within the City*. There are some statements in counsel's argument and brief that might suggest that moving from outside the radius to a place inside the radius would satisfy the ordinance and would produce a result where residents of adjacent cities still could be employed within the City. This is not the case. Parts of the ordinance pertinent here are abstracted below.[5] It is obvious that the purpose of the ordin-

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[3] 7 Utah 2d 28, 317 P. 2d 597 (1957).

[4] Sec. 25-1-7, Revised Ordinances of Salt Lake City 1965.

[5] "Sec. 25-1-7. Residency within city required of all appointive officers and employees. (a) Except as hereinafter provided; every appointive officer and employee of Salt Lake City must be a resident at the time of his appointment and must continue a resident of the city while employed by the city. (b) Appointive officers and employees residing outside a fifteen mile radius from Washington Square at the effective date of this ordinance shall, within two years thereafter, establish residency *within Salt Lake City.*"

ance is to make uniform the residence requirements of all City employees. We have difficulty in concluding other than that any employer, including a city, should be able to draw from a labor pool those who live within a reasonable distance from work, or, if you please, within the city limits. This not only for the city's convenience and economical operation, but conceivably to have those whom it helps clothe and feed participate in and contribute support and taxes for its benefit, — not for that of cities elsewhere.

It is conceded that there will be cases of hardship and inconvenience for some in order to continue their employment with the City, which is regrettable, but we cannot subscribe to the theory of counsel that place of residence is a God-given, constitutional right, determinable and enforceable by an employee against his employer who offers and gives the employee his job, such right unless contractually [sic] is protected.

As to the urgence that government cannot prevent its employees from engaging in political activities, we agree, unless legislation prohibits it in certain areas which, in the nature of things, requires that such activity shall not inure to the detriment of governmental functioning or well-being. The three ordinances attacked here as being unconstitutional are concerned with the City Police, Fire and Health Departments (Secs. 30-1-10, 14-1-5 and 17-3-5, Rev. Ord. S. L. City 1965), under the classified civil service. They have to do with certain restricted political activity. Typical is 30-1-10.[6]

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[6]"Sec. 30-1-10. Political activity. No person of the classified civil service of the police department shall use *his official position or of any person, nor be a member or delegate or alternate to any political convention, nor serve as a member of any committee of any political party, or take any active part in the management of any political campaign, nor solicit, collect, or receive any assessment, subscription, contribution or dues intended or used for any political purpose whatsoever.*"

These ordinances are not unlike the federal Hatch Act which has been held constitutional.[7]

Counsel for plaintiffs urge an examination of Bagley v. Washington Township Hosp. Dist.,[8] which we have done. The case is dissimilar factually and not akin to the civil service ordinances in the instant case. Counsel simply says that basically, Bagley's thrust is that "only a 'compelling' public interest can justify the imposition of restraints upon the political activities of public employees." Counsel has not stated, even in part, the facts of that protracted case. Nor can one find therein any attempt to reverse a Hatch Act case, — nor could the court, had it desired. We think several of the other cases cited have similar infirmities as applied to the facts of this case. Attention is called to 163 A. L. R. 1363 for cases involving political activities of employees.

WE CONCUR:

J. Allan Crockett, Chief Justice

E. R. Callister, Jr., Justice

R. L. Tuckett, Justice

A. H. Ellett, Justice

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[7]Un. Fed. Wkrs. v. Mitchell, 56 F. Supp. 621 (1944).

[8]55 Cal. Rptr. 401, 421 P. 2d 409 (Cal. 1966).

APPENDIX B
PARTIAL TRANSCRIPT OF PROCEEDINGS

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT FILED MAY 24, 1968 (R. 1-10):

"* * *

"2.

"The plaintiffs Salt Lake City Fire Fighters Local 1645, AFL-CIO, Federated Fire Fighters of the State of Utah, Salt Lake City Police Union Local 470, AFL-CIO, Salt Lake City Police Mutual Aid Association and Salt Lake City Employees Local 1004, AFL-CIO are agents and representatives of some 1700 employees of defendant and are authorized and empowered by said employees to undertake and prosecute this action for and on behalf of said employees.

"3.

"Plaintiff Fisher is now and for a number of years last past has been a resident of and taxpayer in Salt Lake County, State of Utah, a citizen of the United States and employed by defendant in the Fire Department.

"4.

"Plaintiff Bradford is now and for a number of years last past has been a resident of and taxpayer in Salt Lake County, State of Utah, a citizen of the United States and employed by defendant in the Police Department.

"* * *

"7.

"Many of the employees of defendant have been employees of defendant for a number of years last past. Many of

the employees of defendant reside outside of the boundaries of defendant. Many of the employees of defendant are highly trained, skilled, educated and experienced in a particular vocation for which employment is available to said employees in Utah solely with defendant.

"8.

"(a) A present justiciable controversy exists between plaintiffs and defendant, . . . and (d) the issues between the parties involved are ripe for judicial determination in that:

"(1) Defendant has adopted and promulgated two Ordinances dated December 6, 1967 and January 4, 1968, respectively, amendatory of Section 25-1-7 of the Revised Ordinances of Salt Lake City, Utah, 1965 copies of which said Ordinances are attached hereto as Attachment I and Attachment II respectively, and by this reference are incorporated herein and hereat;

"* * *

"(5) Plaintiffs contend that defendant, by adoption and promulgation of said Ordinances, has attempted and is attempting to impose residence requirements on all of its employees which said requirements have worked, are working and will continue to work hereafter an unconscionable burden upon said employees;

"(6) Plaintiffs contend that said Ordinances are violative of the basic constitutional rights, civil rights and civil liberties of said employees;

"* * *

"(9) Plaintiffs have advised defendant of the unconscionable burden said Ordinances place upon said employees;

"(10) Plaintiffs have requested that defendant repeal and revoke said Ordinances;

"(11) Notwithstanding said communications from plaintiffs to defendant and the request as aforesaid, defendant has wholly refused and now refuses to repeal or revoke said Ordinances.

"* * *

"10.

"* * * said Ordinances are violative of the 'due process' and 'equal protection' provisions of the Fourteenth Amendment to the Constitution of the United States . . ."

"* * *

"21.

"Each, all and every member of the class of persons for whom this action is brought, namely, 1700 employees of defendant, is a resident of Salt Lake County and a citizen and resident of the State of Utah, a citizen of the United States, a voter, a taxpayer and is vitally and legitimately concerned with and capable of being and willing to be involved in activities required of citizens in protecting and preserving the welfare, freedom and well being of his city, county, state and nation. Each such class member is a loyal, devoted and patriotic citizen.

"22.

"(a) A present justiciable controversy exists between plaintiffs and defendant, . . . and (d) the issues between the parties involved are ripe for judicial determination in that:

"(1) Defendant has adopted certain Ordinances, true copies of which are attached hereto as Attachments III, IV and V, proscribing all political activities of said employees;

"(2) Plaintiffs contend that the following portion of the said Ordinances (Attachments III, IV and V) is unconstitutional, *ultra vires* and wholly without compelling public interest, to wit:

> "No person of the classified civil service . . . shall be a member or delegate or alternate to any political convention, nor serve as a member of any committee of any political party, or take any active part in the management of any political campaign, nor solicit, collect or receive any assessment, subscription, contribution or dues intended or used for any political purpose whatsoever . . ."

"(3) Plaintiffs contend that defendant, by adoption and promulgation of said Ordinances, (Attachments III. IV and V), and more particularly the portion thereof set forth in (2) hereinabove, has wholly deprived said employees of one of their most basic constitutional rights, civil rights and civil liberties;

"(4) Plaintiffs have advised defendant of the plaintiffs' position with respect to said Ordinances and have requested that defendant repeal and revoke that portion

of the said Ordinance set out in (2) herinabove;

"(5) Notwithstanding said communications from plaintiffs to defendant and the request as aforesaid, defendant has wholly refused and now refuses to repeal, revoke, modify or amend the aforesaid portion of said Ordinandces.

"23.

"The right to engage in honest and reasonable political activity is a right guaranteed by both the Constitution of the United States and the Constitution of the State of Utah.

"* * *

"25.

"The adoption and promulgation of said Ordinances (Attachments III, IV and V) and more particularly that portion of said Ordinances set forth in paragraph 22 (d) (2) hereinabove serve no useful or legitimate purpose, impose upon said employees second class citizenship, and stigmatize said employees, without any corresponding gain or benefit, or, in fact, any gain or benefit, to defendant, or the residents of Salt Lake City.

"26.

"Plaintiffs and the members of the class of persons for whom this action is brought and is being prosecuted, have no plain, speedy or adequate remedy of law.

"27.

"Plaintiffs and the members of the class of persons for whom this action is brought and is being prosecuted are sustaining and will continue to sustain irreparable harm, loss and injury unless the said Ordinance and said Statute is de-

clared by this Court to be null and void and the relief prayed for hereinafter is speedily granted by this Court.

"* * *"

ANSWER FILED JUNE 4, 1968:

"* * *

"Defendant admits the allegations of paragraphs 1, 3, 4 and that portion of paragraph 5 which refers to plaintiffs Fisher and Bradford as representing themselves and fellow employees similarly situated. Admits that section of paragraph 7 that many employees of defendant have been employed for numerous years and reside outside the boundaries of defendant but deny each and every other allegation contained in the First Count of plaintiffs' amended complaint * * *" (R. 15-16).

PARTIAL TRANSCRIPT OF TESTIMONY:

Mr. Edward M. Barton testified (R. 27-31):

That he was the Council Director of Utah Council 54, American Federation of State, County and Municipal Employees Union; prior to his present employment, he had been employed as a police officer for Salt Lake City for 12 years and his duties were patrolman, all uniform divisons and all plainclothes divisions except vice squad. He identified and the Court received a map showing thereon the residence of each employee of the City including the Health, Fire and Police Departments, numbering approximately 2,100, and identified the address within the City limits where the employees of each of the said departments worked.

He was asked:

> "Do you know now, or did you know at any time during your employment in this capacity, of any compelling public reason for requiring employees of these three Departments, Health, Police and Fire, residing within the limits of Salt Lake City?"

And he answered: "No, sir, I know of none."

Counsel for Salt Lake City stipulated (R. 32):

> ". . . the city takes the ordinances, which are presently in question, literally; that is, so far as political activity which you only covered — that there can be no political activity on the part of Civil Service employees, primarily Police, Fire, Health and we definitely state that the City takes that position, that there can be no action in a political sense by these employees."

Mr. David Bradford, plaintiff testified (R. 33-37):

That he was presently employed by the Salt Lake City Police Force and had been so employed for 14 years last past; that he was President of Salt Lake Police Local 470; that he was paid $588.00 per month; that he had recently had to remove his residence and had been unable to find comparable housing for comparable cost within the City; that he could not locate housing permitted by his salary within, as distinguished from without, the city limits. He was asked:

> "Have you, in fourteen years on the force, or do you now know of any compelling or important public policy or reason for requiring members of the Police Force to live within [the] City limits?

And he answered: "I know of no reason."

He gave the same answer with respect to prohibiting such employees from engaging in any political activities.

Plaintiffs' Exhibit 4, Opinion letter, Salt Lake City Attorney's Office, October 22, 1965:

> "* * * 6. The above ordinance applies to a non-partisan municipal election as well as a partisan election. * * *"

ORDER, DISTRICT COURT, THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH MADE AND ENTERED JULY 10, 1968 (R. 17-18):

"The above matter came on for hearing before the Honorable D. Frank Wilkins of the Third Judicial District Court in and for Salt Lake County, State of Utah, upon the first day of July, 1968. Plaintiffs were represented by its [sic] counsel Adam M. Duncan and defendant was represented by its counsel Assistant City Attorney Paul G. Grant. Plaintiffs having presented their evidence and arguments, and defendant having presented its argument, and the court being duly advised in the premises, having fully considered the authorities cited by counsel,

"NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiffs' amended complaint for declaratory judgment fails to state a cause of action in either its first count and/or its second count and the complaint of said plaintiffs is hereby dismissed."